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The Honorable Brian A Tsuchida

Attorney for Plaintiff-Intervenors

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

and,

MARIA CRUZ CONTRERAS and
SOFIA VERA RODRIGUEZ,

Plaintiff-Intervenors,

vs.

GIPHX10, LLC d/b/a "HAWTHORN
SUITES BY WYNDHAM," and
JAFFER, INC.,

Defendants.

CASE NO 2:20-cv-01369-RAJ-BAT

**PLAINTIFF-INTERVENORS'
OPPOSITION TO DEFENDANTS'
MOTION TO MODIFY CASE
SCHEDULING ORDER WITH
RESPECT TO DISPOSITIVE
MOTIONS DEADLINE**

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DEFENDANTS' MOTION TO MODIFY CASE
SCHEDULING ORDER WITH RESPECT TO DISPOSITIVE
MOTIONS DEADLINE - 1
Case No. 2:20-cv-01369-RAJ-BAT

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INTRODUCTION

On the eve of mediation between the parties to this action scheduled for May 16, 2022, Defendants announced that they needed to postpone the mediation to get their “affairs in order.” Based on Defendants’ representations that a postponement would foster “the most productive mediation,” Plaintiff-Intervenors reluctantly agreed to reschedule the mediation. However, Plaintiff-Intervenors did not, at any time, agree to modify any other case deadlines. Without citing a scintilla of evidence of “good cause,” Defendants have moved this Court to modify the case scheduling order, for a *fifth* time, to extend both the mediation deadline and the deadline for filing dispositive and *Daubert* motions. Absent *any* showing of “good cause,” this Court should reject Defendants’ efforts to delay the deadlines for dispositive and *Daubert* motions.

FACTS

As noted in Defendants’ Motion to Amend Pretrial Schedule, the parties to this lawsuit have previously stipulated to four modifications of the case scheduling order. Dkt 50. Pursuant to the terms of the March 31, 2022 Amended Pretrial Order (Dkt. 49), the parties agreed to reserve a full day mediation with retired Judge John Erlick. On April 1, 2022, the parties confirmed the full day mediation with Judge Erlick to be held on May 16, 2022. Phelan Declaration In Opposition to Defendants’ Motion to Modify Case Scheduling Order (“Phelan Decl.”), ¶2.

One week before the scheduled mediation, on May 9, 2022, counsel for Defendants, Attorney Aaron Rocke, emailed counsel for Plaintiff EEOC and counsel for Plaintiff-Intervenors stating that he needed to “look at a short delay of mediation to iron out something.” *Id.*, ¶3, **Exh. A**. Counsel for Plaintiff-Intervenors responded to Mr. Rocke’s message expressing frustration and disappointment and asked for clarification of the reasons Defendants were seeking to postpone the mediation. *Id.* Plaintiff-Intervenor’s counsel reminded Mr. Rocke that moving the mediation date into June 2022 as he suggested would require another modification of the

1 scheduling order since the deadline for mediation under the existing scheduling order was May
2 31, 2022. *Id.*

3 Although Plaintiff-Intervenors' counsel sought clarification of the factual basis for an
4 extension of deadlines, Attorney Rocke did not provide any factual reasons for moving case
5 deadlines. *Id.* Instead, he merely provided dates of mediator availability in June 2022. *Id.*
6 Plaintiff-Intervenors reluctantly agreed to reschedule the mediation with the understanding that
7 Defendants would pay any cancelation fees or penalties and that Attorney Rocke would draft a
8 motion seeking leave of court to continue *the mediation deadline*. *Id.*

9 On May 10, 2022, Attorney Rocke circulated a proposed Stipulated Motion seeking to
10 amend the pretrial deadlines, including the mediation deadline, the dispositive motions deadline
11 and *Daubert* motions deadline. *Id.* The draft stipulation contained a bald conclusory statement
12 that "good cause" for the requested modifications to the case scheduling order existed but
13 provided no evidence or factual basis for this assertion.

14 Counsel for Plaintiff-Intervenors declined to sign the stipulation as drafted since it cited
15 no evidence of "good cause" for amending the case scheduling order. *Id.* Counsel for Plaintiff-
16 Intervenors also stated that in the event the case did not resolve in mediation on June 10, 2022,
17 Plaintiff-Intervenors would be ready to file an affirmative motion for partial summary judgment
18 by the June 30, 2022 deadline. *Id.* Since neither party disclosed expert witnesses, the deadline
19 for *Daubert* motions is irrelevant. Phelan Decl., ¶5.

20 Attorney Rocke did not provide *any* factual showing or evidence of good cause to
21 continue the case scheduling order for a *fifth* time. Phelan Decl., **Exh. A**. Instead, Mr. Rocke
22 filed a motion with the Court seeking to move the deadlines for mediation, dispositive motions
23 and *Daubert* motions without providing any explanations for the need for such an extension.
24 Plaintiff-Intervenors disagree that it is necessary to move the current deadline for dispositive
25
26

1 motions or *Daubert* motions and submit that Defendants have failed to present any evidence
2 showing there is “good cause” to do so.

3 Amendments of the scheduling order are governed by Rule 16 of the Federal Rules of
4 Civil Procedure. Pursuant to Fed.R.Civ.P. 16(b)(4), a case schedule may be modified only for
5 “good cause” and with the judge’s consent. Local Rule 16 (b)(6) for the Western District further
6 provides, “The parties are bound by the dates specified in the scheduling order. A schedule may
7 be modified only for good cause and with the judge’s consent. Mere failure to complete discovery
8 within the time allowed does not constitute good cause for an extension or continuance.”
9 Defendants have failed to make any showing of “good cause” to modify the case schedule again
10 by modifying the deadlines for dispositive motions.

11 While prejudice to the opposing party could “supply additional reasons to deny a motion,”
12 Rule 16(b)’ s “good cause” standard primarily considers the diligence of the party seeking the
13 amendment. *Johnson v. Mammoth Recreations*, 975 F.2d 604, 609 (1992). The district court may
14 modify the pretrial schedule “if it cannot reasonably be met despite the diligence of the party
15 seeking the extension.” *Id.* Fed.R.Civ.P. 16 advisory committee’s notes (1983 amendment);
16 *Harrison Beverage Co. v. Dribeck Importers, Inc.*, 133 F.R.D. 463, 469 (D.N.J.1990); *Amcast*
17 *Indus. Corp. v. Detrex Corp.*, 132 F.R.D. 213, 217 (N.D.Ind.1990); *Forstmann*, 114 F.R.D. at
18 85; 6A Wright, Miller & Kane, *Federal Practice and Procedure* § 1522.1 at 231 (2d ed. 1990)
19 (“good cause” means scheduling deadlines cannot be met despite party’s diligence). *Id.*

20 If the party moving for amendment of the scheduling order has not demonstrated
21 diligence, the inquiry should end and the motion should be denied. *Id.* As the Ninth Circuit has
22 observed, “[d]isregard of the [scheduling] order would undermine the court’s ability to control
23 its docket, disrupt the agreed-upon course of the litigation, and reward the indolent and the
24 cavalier.” *Id.* at 610.

1 Here, despite multiple explicit requests for the basis of Defendants' request to extend the
2 deadlines for mediation, dispositive motions and *Daubert* motions, Defendants have refused to
3 provide any evidence or factual basis supporting a finding of "good cause." Instead, Defendants
4 simply stated that an extension of the agreed mediation date was necessary to get some "affairs
5 in order" and that the additional time would enable the "most productive mediation." In
6 recognition that the parties need to be equally committed to the same mediation date for the
7 parties to have the best chance of reaching a mutual resolution of the case, Plaintiff-Intervenors
8 and Plaintiff EEOC agreed to reschedule the mediation. Neither Plaintiff-Intervenors nor Plaintiff
9 EEOC agreed to move the deadline for dispositive motions. Moreover, Defendants have offered
10 no explanation for modifying the dispositive motions deadline. In the event that the case does
11 not resolve at the rescheduled mediation on June 10, 2022, they are prepared to file an affirmative
12 summary judgment motion by current deadline of June 30, 2022. Defendant has provided no
13 evidence that with reasonable diligence, they would be unable to also meet that deadline.

14 CONCLUSION

15 Defendants have provided no evidence of good cause to modify the deadline for
16 dispositive motions. Pursuant to Fed.R.Civ.P. 16(b), this Court should grant the agreed motion
17 to extend the mediation deadline to June 10, 2022 and deny Defendants' motion to Amend the
18 Pretrial Order with respect to the deadline for dispositive or *Daubert* motions.

1 DATED this 25th day of May 2022.

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15 *Attorney for Plaintiff-Intervenors*

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of May, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Roberta L. Steele Roberta.steele@eeoc.gov

Carmen Flores Carmen.flores@eeoc.gov

Aaron Rocke Aaron@rockelaw.com

I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: NONE

/s/ Megan Grosse
Megan Grosse, Legal Assistant